

Applicants: Douglas J. M. Allen et al.  
Serial No.: 10/716,098  
Filed : November 17, 2003  
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**Remarks**

Claims 13, 16-23 and 25-28 were pending in the subject application. By this amendment, applicants have amended claim 23. Applicants submit that the amendments raise no issue of new matter. Accordingly, claims 13, 16-23 and 25-28 will be pending and under examination upon entry of this response.

**Rejection under 35 U.S.C. §112, second paragraph**

In the August 20, 2008 Final Office Action, the Examiner rejected claims 23, 25 and 26 under 35 U.S.C. §112, first paragraph, alleging that the specification, while enabling for treating cancers such as lung, breast, colorectal, prostate and ovarian, does not reasonably provide enablement for treating other cancers or non-cancerous hyperproliferative diseases as claimed.

In response, without conceding the correctness of the Examiner's arguments or relinquishing their right to pursue patent protection for any canceled subject matter, applicants have amended claim 23 to only recite those diseases that the Examiner deemed to be enabled. Applicants note that claims 25 and 26 are dependent on claim 23.

Therefore, applicants respectfully request that the Examiner reconsider and withdraw this rejection.

**Allowable Subject Matter**

Applicants thank the Examiner for his acknowledgement that claims 13, 16-22, 27 and 28 of the subject application are allowed.

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No fee is deemed necessary in connection with the filing of this amendment. However, if any other fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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